Mohd Zaid bin Ibrahim & Ors v Badan Peguam Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-23NCvC-72–09 OF 2022
ROZ MAWAR J
29 MAY 2025

Legal Profession — Duty — Statutory duty — President of Malaysian Bar issued press release regarding misconduct in connection with high-profile criminal appeal proceedings before Federal Court — Whether President of Malaysian Bar breached statutory duty under s 90 of Legal Profession Act 1976 — Legal Profession Act 1976 ss 42(1)(d), 90 & 99

Tort — Conspiracy — Defamation — President of Malaysian Bar issued press release regarding misconduct in connection with high-profile criminal appeal proceedings before Federal Court — Plaintiffs alleged statements in press release defamatory of plaintiffs — Whether Malaysian Bar and its president had maliciously and wrongfully conspired and combined to defame and injure plaintiffs

Tort — Defamation — Impugned statements — President of Malaysian Bar issued press release regarding misconduct in connection with high-profile criminal appeal proceedings before Federal Court — Plaintiffs alleged statements in press release defamatory of plaintiffs — Whether impugned statements defamatory — Whether impugned statements referred to plaintiffs

In the present case, the plaintiffs, senior legal practitioners, contended that a press release issued on 19 August 2022 by the Malaysian Bar ('the first defendant') and its then president ('the second defendant'), particularly paras 2 and 6 of the press release ('the press release'), had defamed them, falsely imputing professional misconduct in connection with high-profile criminal appeal proceedings involving Dato' Sri Najib Razak ('DSNR') before the Federal Court. In the said criminal appeal proceedings, the plaintiffs had on multiple occasions applied for adjournment of the appeal and to discharge themselves from representing DSNR. In fact, during the proceedings of the appeal, DNSR had discharged the plaintiffs as his solicitors. The plaintiffs' dissatisfaction in the present case was in relation to the passages in paras 2 and 6 of the press release which referred by name to the plaintiffs and characterised the conduct of the defence team in the said criminal appeal as comprising 'unscrupulous strategies', 'a perversion of our justice system', and 'unprofessional conduct' requiring disciplinary action ('the impugned

statements'). In relation to this defamation action, the issues to be determined were: (a) whether the plaintiffs had on a balance of probabilities, established the essential elements of the tort of defamation, namely that the impugned statements were defamatory, that the impugned statements referred to the plaintiffs, and that the impugned statements were published to the third parties (the third element was not disputed by the defendants); and (b) whether any of the recognised defences to defamation — justification, fair comment, or qualified privilege — had been proven. In addition to the defamation action, the plaintiffs also submitted that: (i) the defendants had maliciously and wrongfully conspired and combined to defame and injure the plaintiffs; and (ii) the second defendant, in issuing the press release, breached her statutory duty under s 90 of the Legal Profession Act 1976 ('the LPA').

Held, dismissing the plaintiffs' claim for defamation, conspiracy to injure, and breach of statutory duty with no order as to costs:

(1) On the face of it, the impugned statements were capable of bearing defamatory meaning but the court must assess whether, in context, the words would actually convey a defamatory meaning to the ordinary reader. Based on the evidence, by the time the Malaysian Bar issued the press release, the following matters were already firmly in the public domain: (a) the Federal Court had publicly and repeatedly refused all attempt at adjournment; (b) the plaintiffs' own public disclosures; (c) the unfolding of events in open court; and (d) the scrutiny of the plaintiffs' decisions and actions by the legal fraternity and the wider public. In these circumstances, the impugned words — though strongly worded — did not materially lower the plaintiffs' reputation any further than what was already in place (see paras 52–53 & 60–61).

(2) The court accepted that professional reputations were deserving of protection. However, the legal threshold for defamation was not met where the sting of a statement did not materially add to a reputational damage already occasioned by events and disclosures independent of the impugned statements published. For the above reasons, the court was therefore not satisfied that the impugned words, in the context in which they were published and in light of the substantial material already publicly available, and when read fairly in context and through the eyes of an informed reasonable reader, bore a defamatory meaning in law (see paras 62–63).

(3) On totality of the evidence, the court found that: (a) para 2 of the press release referred expressly to the plaintiffs by name; and (b) para 6 of the press release referred to the same course of conduct and included the plaintiffs by necessary implication. The impugned words would be understood by the ordinary reasonable reader to refer to the plaintiffs, especially those acquainted with the public developments in the Federal

Court appeals. Accordingly, the court found that the impugned statements did refer to the plaintiffs (see paras 78–80).

(4) The court concluded that on a balance of probabilities, the defamatory meanings alleged by the plaintiffs in their amended statement of claim were not borne out by the impugned words, either expressly or by necessary implication. Although the impugned words referred to the plaintiffs and were published, the impugned words were not defamatory in their natural and ordinary meaning, when read in context. The plaintiffs had failed to establish the first and essential element of the tort of defamation on a balance of probabilities. Consequently, where the threshold element of defamatory meaning was not proven in the present case, the court was not required to consider the pleaded defences (see paras 81–83).

(5) The plaintiffs' claim for conspiracy to injure faltered at the first hurdle. There was no evidence — direct or circumstantial — that there was any agreement or combination between the Malaysian Bar and the second defendant to act together against the plaintiffs. The plaintiffs did not plead nor prove any act of injury separate from the publication of the press release. The conspiracy claim was therefore either unfounded in fact or redundant in law (see paras 89–90).

(6) The court found that the plaintiffs had not established that s 90 of the LPA, as pleaded, created a civilly enforceable statutory duty capable of supporting an independent private cause of action against the second defendant or the Malaysian Bar, in the circumstances of the present case. Further, the court found that the second defendant had acted within the institutional remit of s 42(1)(d) of the LPA, and that the impugned statements were expressions of institutional concern, not a premature disciplinary finding. In the absence of reliance on s 99 of the LPA or proof of actual loss, the plaintiffs' cause of action against the defendant was without merit (see para 100).

[Bahasa Malaysia summary

Dalam kes semasa, plaintif-plaintif yang merupakan pengamal-pengamal undang-undang kanan, berhujah bahawa siaran akhbar yang dikeluarkan pada 19 Ogos 2022 oleh Badan Peguam Malaysia ('defendan pertama') dan presidennya ketika itu ('defendan kedua'), khususnya perenggan 2 dan 6 siaran akhbar tersebut ('siaran akhbar tersebut'), telah memfitnah mereka, secara salah mengandaikan salah laku professional berkaitan prosiding rayuan jenayah berprofil tinggi di hadapan Mahkamah Persekutuan yang melibatkan Dato' Sri Najib Razak ('DSNR'). Dalam prosiding rayuan jenayah tersebut, plaintif-plaintif telah beberapa kali memohon untuk menangguhkan rayuan dan melepaskan diri mereka daripada mewakili DSNR. Malah, semasa prosiding rayuan, DNSR telah melepaskan plaintif-plaintif sebagai peguam

caranya. Ketidakpuasan hati plaintif-plaintif dalam kes semasa adalah berhubung petikan dalam perenggan 2 dan 6 siaran akhbar tersebut yang merujuk kepada nama plaintif-plaintif dan mencirikan kelakuan pasukan pembelaan dalam rayuan jenayah tersebut sebagai terdiri daripada 'unscrupulous strategies', 'a perversion of our justice system', dan 'unprofessional conduct' yang memerlukan tindakan disiplin ('pernyataan yang disangkal tersebut'). Berhubung dengan tindakan fitnah ini, isu-isu yang perlu ditentukan adalah: (a) sama ada plaintif-plaintif telah, di atas imbangan kebarangkalian, membuktikan unsur-unsur penting tort fitnah, iaitu bahawa pernyataan yang disangkal tersebut adalah memfitnah, bahawa pernyataan yang disangkal tersebut merujuk kepada plaintif-plaintif, dan bahawa pernyataan yang disangkal tersebut telah diterbitkan kepada pihak ketiga (elemen ketiga tersebut tidak dipertikaikan oleh defendan-defendan); dan (b) sama ada mana-mana pembelaan yang diiktiraf bagi tindakan fitnah — justifikasi, ulasan yang adil, atau keistimewaan bersyarat — telah dibuktikan. Sebagai tambahan kepada tindakan fitnah tersebut, plaintif-plaintif juga berhujah bahawa: (i) defendan-defendan secara berniat jahat dan salah bersubahat dan bergabung untuk memfitnah dan mencederakan plaintif-plaintif; dan (ii) defendan kedua, dalam mengeluarkan siaran akhbar tersebut, melanggar kewajipan berkanunnya di bawah s 90 Akta Profesion Undang-Undang 1976 ('APUU').

Diputuskan, menolak tuntutan plaintif-plaintif untuk fitnah, konspirasi untuk mencederakan, dan pelanggaran kewajipan berkanun tanpa perintah mengenai kos:

(1) Pada zahirnya, pernyataan yang disangkal tersebut mampu membawa maksud fitnah tetapi mahkamah haruslah menilai sama ada, dalam konteks, perkataan-perkataan tersebut benar-benar membawa maksud fitnah kepada pembaca biasa. Berdasarkan keterangan, pada masa Badan Peguam Malaysia mengeluarkan siaran akhbar tersebut, perkara-perkara berikut telah pun berada dalam domain awam: (a) Mahkamah Persekutuan secara terbuka dan berulang kali menolak semua percubaan penangguhan; (b) pendedahan awam plaintif-plaintif sendiri; (c) penyingkapan peristiwa di mahkamah terbuka; dan (d) penelitian terhadap keputusan dan tindakan plaintif-plaintif oleh komuniti undang-undang dan orang awam keseluruhannya. Dalam keadaan ini, pernyataan yang disangkal tersebut — walaupun tegas — tidak secara material merendahkan reputasi plaintif-plaintif dengan lebih teruk daripada keadaan yang sedia ada (lihat perenggan 52–53 & 60–61).

(2) Mahkamah bersetuju bahawa reputasi profesional layak dilindungi. Walau bagaimanapun, ambang undang-undang untuk fitnah tidak dipenuhi jika sengat pernyataan tersebut tidak secara material menambah kerosakan reputasi yang telah pun rosak disebabkan oleh peristiwa dan pendedahan yang bebas daripada pernyataan yang

disangkal yang diterbitkan tersebut. Atas sebab-sebab di atas, mahkamah oleh itu tidak berpuas hati bahawa perkataan-perkataan yang disangkal, dalam konteks di mana ia diterbitkan dan mengambil kira material-material yang begitu banyak yang telah tersedia secara umum, dan apabila dibaca secara adil dalam konteks dan melalui pandangan pembaca yang berpengetahuan yang munasabah, membawa maksud fitnah dalam undang-undang (lihat perenggan 62–63).

(3) Mengambil kira keseluruhan keterangan, mahkamah mendapati bahawa: (a) perenggan 2 siaran akhbar tersebut merujuk secara jelas kepada nama plaintif-plaintif; dan (b) perenggan 6 siaran akhbar tersebut merujuk kepada perjalanan tindakan yang sama dan melibatkan plaintif-plaintif melalui implikasi yang perlu. Perkataan-perkataan yang disangkal tersebut akan difahami oleh pembaca biasa yang munasabah untuk merujuk kepada plaintif-plaintif, terutamanya mereka yang mengetahui perkembangan awam dalam rayuan Mahkamah Persekutuan tersebut. Sehubungan itu, mahkamah mendapati bahawa pernyataan yang disangkal tersebut merujuk kepada plaintif-plaintif (lihat perenggan 78–80).

(4) Mahkamah membuat kesimpulan bahawa di atas imbangan kebarangkalian, maksud fitnah yang didakwa oleh plaintif-plaintif dalam pernyataan tuntutan terpinda mereka tidak dibuktikan oleh perkataan-perkataan yang disangkal tersebut, sama ada secara nyata atau melalui implikasi yang perlu. Walaupun perkataan-perkataan yang disangkal tersebut merujuk kepada plaintif-plaintif dan telah diterbitkan, namun perkataan-perkataan yang disangkal tersebut tidak memfitnah dalam maksud semula jadi dan biasanya, apabila dibaca dalam konteks. Plaintif-plaintif telah gagal untuk membuktikan elemen pertama dan penting dalam tort fitnah di atas imbangan kebarangkalian. Akibatnya, apabila unsur ambang maksud fitnah tidak dibuktikan dalam kes semasa, mahkamah tidak perlu mempertimbangkan pembelaan-pembelaan yang diplid (lihat perenggan 81–83).

(5) Tuntutan plaintif-plaintif bagi konspirasi untuk mencederakan telah menjadi goyah pada halangan pertama. Tidak terdapat keterangan — langsung atau mengikut keadaan — bahawa terdapat apa-apa persetujuan atau gabungan antara Badan Peguam Malaysia dan defendan kedua untuk bertindak bersama terhadap plaintif-plaintif. Plaintif-plaintif tidak memplid atau membuktikan apa-apa tindakan kecederaan yang berasingan daripada penyiaran siaran akhbar tersebut. Oleh itu, tuntutan konspirasi tersebut sama ada tidak berasas secara fakta atau berlebihan dalam undang-undang (lihat perenggan 89–90).

(6) Mahkamah mendapati bahawa plaintif-plaintif gagal membuktikan bahawa s 90 APUU, seperti yang diplid, mewujudkan kewajipan berkanun yang boleh dikuatkuasakan secara sivil yang mampu

menyokong kausa tindakan persendirian yang bebas terhadap defendan kedua atau Badan Peguam Malaysia, dalam keadaan kes semasa. Selanjutnya, mahkamah mendapati bahawa defendan kedua telah bertindak dalam bidang kuasa institusi s 42(1)(d) APUU, dan bahawa pernyataan yang disangkal tersebut adalah ungkapan kebimbangan institusi, bukan dapatan tatatertib pramatang. Sekiranya tiada pergantungan pada s 99 APUU atau bukti kerugian sebenar, kausa tindakan plaintif-plaintif terhadap defendan-defendan adalah tidak bermerit (lihat perenggan 100).]

Cases referred to

Chiam See Tong v Ling How Doong & Ors [1995] 1 SLR 152; [1996] SGHC 293; [1996] SCD 188, HC (folld)

Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300; [2019] 1 MLRA 515; [2019] 1 CLJ 329; [2018] 8 AMR 317, FC (refd)

Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services [2009] 3 MLJ 665; [2009] 1 MLRA 392; [2009] 4 CLJ 113, CA (refd)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577, FC (refd)

Dato' Sri Mohd Najib bin Hj Abd Razak v PP and other appeals (No 1) [2022] 5 MLJ 85; [2022] 8 CLJ 393, FC (refd)

Handskar (M) Sdn Bhd v Medical Products Sdn Bhd & Anor [2024] 9 MLJ 237; [2023] MLRHU 2471, HC (refd)

Knupffer v London Express Newspaper Ltd [1944] AC 116, HL (refd)

Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390, HC (folld)

Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association) [2022] 4 MLJ 454; [2022] 5 MLRA 208; [2022] 5 CLJ 847; [2022] 4 AMR 753, FC (folld)

Lucas-Box v News Group Newspapers Ltd [1986] 1 WLR 147; [1986] 1 All ER 177, CA (refd)

Morgan v Odhams Press Ltd [1971] 1 WLR 1239, HL (folld)

Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors [1979] 1 MLJ 71; [1978] 1 MLRA 66, FC (folld)

Pickering v Liverpool Daily Post and Echo Newspapers plc and others [1991] 2 AC 370; [1990] 1 All ER 335; [1990] 2 WLR 494, CA (refd)

Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 2 MLRA 345; [2019] 3 CLJ 729; [2019] 2 AMR 525, FC (refd)

Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong [2024] 4 MLJ 260; [2024] 6 CLJ 635; [2024] 5 MLRA 68, FC (refd)

Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56; [1973] 1 MLRH 153 (folld)

Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors [1995]

A 1 MLJ 39; [1994] 3 MLRH 203; [1995] 1 CLJ 117; [1995] 1 AMR 069, HC (refd)

Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Anor [2021] 6 MLJ 563, FC (refd)

B *Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor* [2011] 2 MLJ 1; [2010] 3 MLRA 78; [2011] 1 CLJ 409, FC (folld)

Legislation referred to

C Defamation Act 1957 s 8
Legal Profession (Practice and Etiquette) Rules 1978 rr 6(a), (e), 24(a)
Legal Profession Act 1976 ss 42(1)(d), 90, 99, Part VII

Rueben Mathiavaranam (with Mohd Zaid Ibrahim and Liew Teck Huat) (Zaid Ibrahim Suflan TH Liew & Partners) for the plaintiffs.

D *Andrew Chiew Ean Vooi (with Jason Koh Wei Siang, Tiffany Low Jia Qi, Hoi Jack S'ng, Celes Chuah Xin Ni (Pupil in Chambers) and Yee Xin Yi (Pupil in Chambers)) (Lee Hishamuddin Allen & Gledhill) for the defendants.*

E **Roz Mawar J:**

DECISION

[1] This court is called upon to determine a claim which has attracted public F interest by reason of the identities of the parties and the issues it raises concerning the professional conduct of advocates and solicitors in the administration of justice. The plaintiffs, senior legal practitioners, contended that a press release issued on 19 August 2022 by the Malaysian Bar and its then president has defamed them, falsely imputing professional misconduct in G connection with high-profile criminal appeal proceedings before the Federal Court.

[2] The plaintiffs further claimed that the defendants specifically intended and/or tacitly authorised the media organisations to publish or republish and H disseminate the words contained in the press release.

[3] It was also contended that the defendants maliciously and wrongfully conspired and combined amongst themselves to defame and injure the plaintiffs in the way of their professional capacities as advocates and solicitors I having conduct of the criminal appeal proceedings at the Federal Court.

[4] The plaintiffs alleged that the defendants, by having issued and disseminated the press release, had decided and condemned them for professional misconduct in the criminal appeal proceedings at the Federal

Court and thus were in breach of their statutory duty under s 99 of the Legal Profession Act 1976 ('the LPA'). A

[5] Given the serious nature of the allegations — touching upon the plaintiffs' professional reputation and the perceived integrity of the justice system — this court sets to approach the evidence with care and decide the issues strictly in accordance with established legal principles. Public scrutiny cannot replace the rule of law, and media speculation has no place in judicial deliberation. B

C

DEFAMATION

[6] The task before the court is to first evaluate whether the plaintiffs have on a balance of probabilities, established the essential elements of the tort of defamation, namely that the impugned statements are defamatory, that they refer to the plaintiffs, and that they were published to third parties. The court must also consider whether any of the recognised defences to defamation — justification, fair comment, or qualified privilege — have been successfully made out by the defendant should liability be established. D

E

[7] It is in this context that the court now turns to examine the pleadings, the evidence adduced, and the submissions of the parties.

THE PLEADED CASE

F

[8] The plaintiffs' claim is premised on a press release published on 19 August 2022 by the second defendant, then president of the first defendant (the Malaysian Bar) on the latter's website. The press release was titled: 'Abuse of Process Brings Disrepute to Our Justice System'.

G

[9] The plaintiffs pleaded that two specific paragraphs of the press release, in their natural and ordinary meaning, defamed them. These are paras 2 and 6 of the press release. The relevant impugned portions of the press release pleaded to be defamatory are as follows:

H

Paragraph 2:

> The nation is witnessing our justice system being abused and brought to disrepute through the frantic acts and numerous attempts to postpone the hearing of the case, application to discharge from acting for the former Prime Minister, defiance by refusing to proceed with submissions on the appeal after the Federal Court had made its ruling, and the sudden discharge of Zaid Ibrahim, Liew Teck Huat and Rueben Mathiavaranam, by Dato' Sri Najib Razak. I

Paragraph 6:

A The various attempts to undermine the justice system through such unscrupulous strategies are a perversion of our justice system and an abuse of the court process. The advocates and solicitors involved in such acts have conducted themselves unprofessionally and would have to face disciplinary action.

B **[10]** The plaintiffs pleaded that the above statements bear the following defamatory imputations (amended statement of claim ('SOC'), para 12):

(a) that the plaintiffs deliberately acted unprofessionally by accepting the brief for Dato' Sri Najib Razak with an improper agenda to abuse the C process of the court;

(b) that the plaintiffs accepted the brief with an ulterior motive to undermine the justice system by resorting to unscrupulous strategies;

(c) that the plaintiffs' conduct was designed to pervert the course of justice; D

(d) that the plaintiffs' conduct in accepting the brief was designed to bring the legal profession into disrepute and thereby undermine the dignity of the legal profession;

E (e) that the plaintiffs as senior members of the Malaysian Bar are unprofessional, incompetent and ignorant of the professional rules of practice and etiquette;

(f) that the plaintiffs had no compunction in abusing the process of the court for their own ulterior motive;

F (g) that the plaintiffs acted in flagrant contempt of court;

(h) that the plaintiffs prostituted their principles as advocates and solicitors in return for money;

G (i) that the plaintiffs knew it was improper to have accepted the brief but did so because they accepted substantial fees; and

(j) that the plaintiffs are not fit to practise as advocates and solicitors.

[11] The plaintiffs contended that the impugned statements referred to H them directly, particularly by name in para 2 and through reference to 'advocates and solicitors involved in such acts' in para 6, and that the publication was made to the public at large via the Malaysian Bar's website.

DEFENCES

I

[12] In their amended defence, the defendants denied that the impugned statements bear the defamatory meanings as alleged by the plaintiffs in para 12 of the amended SOC. They also deny that the statements refer to the plaintiffs in the defamatory sense alleged or at all.

[13] In the alternative, and pursuant to *Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147; [1986] 1 All ER 177, the defendants have pleaded their own justifiable meanings of the impugned statements. These are set out at paras 13 and 14 of the amended defence. The *Lucas-Box* meanings pleaded are:

(a) that the plaintiffs, as advocates and solicitors involved in the criminal appeals of Dato' Sri Najib Razak before the Federal Court between 15 August 2022 and 19 August 2022, had conducted themselves unprofessionally;

(b) that such conduct amounted to non-adherence to the Legal Profession (Practice and Etiquette) Rules 1978 ('the LPA Rules'), in particular rr 6(a) and 24(a);

(c) that such conduct enabled or condoned an abuse of the process of the court in a manner that brought the justice system into disrepute; and

(d) that the plaintiffs' professional conduct in the matter would render them liable to face disciplinary action under the LPA.

[14] Based on the *Lucas-Box* meanings, the defendants pleaded the statutory and common law defences of:

(a) justification, pursuant to s 8 of the Defamation Act 1957, and as affirmed in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577 (FC), contending that the gist or sting of the statements is true;

(b) fair comment, arguing that the statements were expressions of opinion based on true facts of public interest, including the widely reported circumstances surrounding the conduct of the Federal Court appeals; and

(c) qualified privilege, on the basis that the Malaysian Bar and its president (the second defendant) had a legal, moral and social duty to make the statement in discharge of their statutory functions under the LPA.

[15] The defendants further contended that the press release does not contain any express or implied assertion that the plaintiffs were guilty of any criminal offence, dishonesty, or conduct unbefitting of legal practitioners beyond what is set out in the *Lucas-Box* meanings.

ISSUES TO BE TRIED

[16] Trial was conducted over the course of five days. This court heard, in full, the oral testimonies of all three plaintiffs. The second defendant testified on her own behalf and for the Malaysian Bar. The issues this court is set to determine for the case of defamation are:

(a) whether the impugned words, in their natural and ordinary meaning, are defamatory of the plaintiffs;

(b) whether the impugned words refer to the plaintiffs, either expressly or by implication;

(c) whether the words complained of were published by the defendants to third parties;

(d) if the words are found to be defamatory of the plaintiffs:

(i) whether the defendants are entitled to rely on the defence of justification under s 8 of the Defamation Act 1957;

(ii) whether the defendants are entitled to rely on the defence of fair comment on a matter of public interest; and

(iii) whether the defendants are entitled to rely on the defence of qualified privilege, having publishes the impugned statements in the discharge of statutory and professional duties.

(e) whether the plaintiff are entitled damages, including aggravated and/or exemplary damages.

[17] The defendants do not dispute the third issue.

MATERIAL FACTS

[18] The plaintiffs are advocates and solicitors of the High Court of Malaya and at all material times were practising as partners of Messrs Zaid Ibrahim Suflan TH Liew & Partners ('ZIST'). They are also members of the Malaysian Bar.

[19] The Malaysian Bar is a body corporate established under the LPA. The second defendant was the president of the Malaysian Bar at the material time and when this action was brought.

[20] On or about 25 July 2022, the plaintiffs were appointed to act as solicitors and co-counsel in the Federal Court appeal of Dato Seri Najib Razak, which was fixed for hearing from 15 August 2022 to 26 August 2022. The plaintiffs replaced the former solicitors, Messrs Shafee & Co, shortly before the appeals were heard.

[21] Prior to the appointment of the plaintiffs, the Federal Court had fixed the hearing dates as early as 8 April 2022 and had informed parties — including Messrs Shafee & Co — that the hearing would proceed as scheduled. The plaintiffs, having taken over the conduct of the appeals barely three weeks before the hearing, and despite being aware of the fixture, made multiple

applications to adjourn the hearing, which were all refused by the Federal Court:

(a) on 26 July 2022, ZIST wrote to the registrar of the Federal Court applying for an adjournment on the ground that a new legal team had taken over and required to study the voluminous appeal records. This application was rejected on 28 July 2022.
An article about this application of adjournment was published and had caused uproar despite it being rejected on 28 July 2022. Amongst the comments from the public regarding adjournment on 26 July 2022, as follows:

(i) by Demi Rakyat:

> Guaranteed that there will be a request for time for the new lawyers to familiarise themselves with the case. So many documents to read! The change of solicitors is just a delay tactic by Najib, the convicted criminal and national embarrassment.

(ii) constitutional supremacy:

> Absolutely right.
>
> Zaid for the last about 1 year has been making statements supporting Najib. Now he is the counsel. It is likely a plan to change solicitors at last minute so that put pressure on court to postpone Najib's case.
>
> Can expect documents to be given to Zaid 1 or 2 days before trial and Zaid saying that it is impossible for him to go on. That he needs 2 to months to prepare. If court does not allow adjournment, then can expect Zaid to withdraw acting for Najib.

(iii) by Lime Salmon0464:

> Total abuse of process! Pathetic attempt to postpone hearing to find a new defence counsel

(iv) by A Little Bit Crazy:

> Alamak Lawyer Liew,
>
> Very disappointed with you lawyers. Najib must be paying you a few tons of money. You are now the accomplice of National Embarrassment. I always naively assume lawyers are justice fighters. Now, I will stop my girls to read law, because I feel very ashamed on your profession la.

(v) by bravemalaysian:

> Will this law firm bearing the name of an illustrious lawyer soil its name by being drawn by money to play this evil game? Don't try to rob Malaysians of seeing justice after being robbed.

(b) on 29 July 2022, during case management, the second plaintiff and Hisyam Teh Poh Teik (the new lead counsel for Dato Seri Najib Razak) renewed the application for adjournment. The deputy registrar of the Federal Court reminded parties that the Federal Court had, no less than four times, warned that the hearing would proceed as fixed; and

(c) on 1 August 2022, the second plaintiff again wrote to the Federal Court indicating that an adjournment would be sought after disposal of a motion to adduce fresh evidence. This strategy, too, was rejected on 2 August 2022.

[22] The first plaintiff made repeated public comments on the conduct of the appeal both prior to and during the hearing via Facebook posts and interviews to online and mainstream media. To each of them, the written responses by and from the public showed that the news of the plaintiffs taking up the brief last minute was not positively received. Based on the written responses, more than majority of the viewers and readers opined it as a delay tactic.

[23] On 12 August 2022 before the appeal proceedings at the Federal Court, he had informed the press that ZIST did not make any statement during the case management hearing in chambers that it would be discharging itself as solicitors. On his Facebook page he said, 'We do not abandon our clients'. He noted that media reports stating the contrary were 'mischievous and regrettable'.

[24] On 15 August 2022, the hearing of the appeal commenced before a five member panel of the Federal Court. The motion to adduce fresh evidence was heard. The Federal Court fixed the following day for decision to deliberate arguments from all parties.

[25] On 16 August 2022, the Federal Court dismissed the motion to adduce fresh evidence. Immediately following its dismissal, the Federal Court directed parties to proceed with the main appeals. However, the new lead counsel for Dato Seri Najib Razak, Hisyam Teh Poh Teik, informed the Federal Court that he was not prepared to proceed with the merits of the appeal. He informed the Federal Court that he needed substantial time to organise his case, given the size of the appeal records and the gravity of the issues. A three to four month adjournment was sought. The plaintiffs did not make an independent application but were aligned in seeking an adjournment.

[26] This application was denied by the Federal Court. It reiterated that the hearing dates were fixed as early as April 2022 and were repeatedly affirmed, reminding them of the multiple cautions issued that the hearing would proceed

regardless of any change in counsel. The Federal Court made specific references to r 6(e) of the LPA Rules, cautioning against accepting briefs without the certainty of being able to appear and conduct the case on the required day.

[27] Nevertheless, the Federal Court, recognising the seriousness of the matter and the need to ensure fairness, adjourned the hearing to 18 August 2022, expressly stating that the adjournment was granted 'to allow counsel for the appellant to organise themselves'.

[28] There was a brief press conference where Dato Seri Najib Razak and Hisyam Teh Poh Teik expressed their disappointment. The first plaintiff took the opportunity to 'strongly admonished those who castigated him for taking up the former prime minister's case' as published by the press.

[29] On 18 August 2022, when the hearing of the appeal resumed, Hisyam Teh Poh Teik reiterated that he was not prepared and applied to discharge himself. The application was made openly in court before the five member panel of the Federal Court, and the plaintiffs then still on record, did not intercede or object. The Right Honourable Chief Justice who chaired the Federal Court panel queried whether he had accepted that his proposed withdrawal would leave Dato Seri Najib Razak unrepresented; Hisyam Teh Poh Teik confirmed this. The Federal Court urged him to proceed and assured him of its confidence, but he insisted he was 'not prepared'.

[30] The records show that the bench had remarked that Hisyam Teh Poh Teik had 'so many abled solicitors'. This clear cue to proceed with the appeal was meant for the plaintiffs. They were on record and were present in court. There was no response by the plaintiffs to the Federal Court's indication or offer to submit on the appeal. Instead, the plaintiffs remained silent and did not address the court.

[31] After standing down to deliberate, the Federal Court refused the application to discharge counsel and Hisyam Teh Poh Teik was ordered to continue. However, he declined to make submissions and informed the Federal Court that he 'would leave it entirely to the court'. The Federal Court recorded him as having 'nothing to say' and directed Public Prosecutor to begin submissions in the public interest. The Federal Court noted that the matter involved ten days of allocated hearing time and the need to avoid unnecessary delay or waste of judicial resources.

[32] In its oral ruling and subsequent written grounds, the Federal Court emphasised that the appeal dates had been fixed in April 2022 and were repeatedly reaffirmed despite the change in legal representation. The Federal Court took judicial notice of these repeated applications for adjournments and

recorded, inter alia that all parties had ample notice of the hearing dates, and that adjournments would not be entertained.

[33] On 19 August 2022, as the appeal was to continue, the Federal Court was informed that Dato Seri Najib Razak had discharged the plaintiffs as solicitors. No formal application to withdraw was made by or on behalf of the plaintiffs. The first plaintiff was not in court; the second and third plaintiffs left the courtroom when the proceedings reconvened. The appeal was later adjourned to 23 August 2022.

[34] Later, on the same day 19 August 2022 at 5.21pm, the first plaintiff took to posting the following on his Facebook page:

> This morning, lead counsel Hisyam Teh Poh Teik, informed the Federal Court that my law firm has been discharged.

[35] He added: 'I confirm that this decision was made by Datuk Seri Najib with my full support and agreement'.

[36] On 19 August 2022 at 5.44pm, whilst the conclusion of the appeals was still pending and amidst public criticism surrounding the manner in which the appeals were conducted, the second defendant, in her capacity as the president of the Malaysian Bar, issued the said press release entitled 'Abuse of Process Brings Disrepute to Our Justice System'. It was published on the Malaysian Bar's official website. The press release was drafted by the second defendant personally, drawing from the public record, notes of counsel who held a watching brief, and media reports.

[37] Notwithstanding the discharge of the plaintiffs as solicitors on 19 August 2022, and the refusal of Hisyam Teh Poh Teik's application to discharge himself as counsel, the appeal proceeded on the scheduled dates, on 23 August 2022, before the full panel of the Federal Court. The Federal Court noted this refusal on record and proceeded to consider the matter based on the available record and the submissions of the public prosecutor, who had presented its case in full over the course of the hearing.

[38] On 23 August 2022, the Federal Court delivered its judgment on the appeals, affirming the convictions and sentences imposed by the High Court and upheld by the Court of Appeal. The judgment of the Federal Court is reported at *Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor and other appeals (No 1)* [2022] 5 MLJ 159; [2022] 8 CLJ 393, citing, among others, the lack of cogent grounds for adjournment, the conduct of both solicitor and counsel, and the public interest in ensuring the finality and integrity of criminal proceedings.

[39] Thus, the appeal was disposed of on its merits, without participation from the appellant's legal team, whose refusal to proceed was recorded and factored into the Federal Court's observations and conclusion.

[40] On 26 August 2022, the first plaintiff has uploaded a video titled: 'Pesanan saya buat Ahli UMNO' and made a statement regarding the adjournment. The following is an excerpt of his comments:

> Kalau kita tak dapat minta Hakim beri masa 2 bulan, kita bukan minta 2 tahun, 2 bulan untuk mendengar kes itu, untuk kita mempelajari ataupun meneliti Kembali rekod-rekod itu, apakah ini tuntutan yang tidak munasabah? Apakah ini tuntutan orang yang ingin menyokong perasuah?

[41] Regarding the press release, the plaintiffs took objection to specific portions namely its paras 2 and 6 (which are reproduced in para 9 above of this court's reasoned decision). The plaintiffs contended that the impugned words were defamatory and directly or indirectly referred to them. A letter of demand was issued by the plaintiffs on 26 August 2022 to the second defendant.

[42] On 30 August 2022, the first plaintiff had an interview with Astro Awani regarding the adjournment and is aware that the Malaysian Bar might take disciplinary action against him.

[43] On 31 August 2022 the first plaintiff took to social media again — posted his open letter part two on his Facebook page. The first plaintiff published his comments on the Federal Court's decision not to allow their application for adjournment.

[44] In response to the plaintiff's letter of demand dated 26 August 2022, the second defendant through her solicitors Messrs Lee Hishammuddin Allen & Gledhill ('LHAG') informed the plaintiffs that she stood by the press release.

[45] The Malaysian Bar issued a press release on 5 September 2022 declaring that it unanimously stood by the second defendant and her press release. The plaintiffs then issued a notice of intended action to the Malaysian Bar dated 22 September 2022. LHAG responded to the plaintiffs' on 28 September 2022 for the Malaysian Bar, informing them that it had instructions to accept service.

[46] On 20 January 2023, the first plaintiff posted a video on his Facebook account titled 'The Greatest Showman':

> Shafee is a showman ... not a good lawyer. But of course in the kingdom of the blind, he's king.

> We need to change lawyers so that the judges will be willing to listen ... That is why we told Najib that we have to change lawyers.

[47] Free Malaysia today published the first plaintiff's statements who had responded to Shafie's claim that 'Zaid's firm, Zaid Ibrahim Sufflan TH Liew & Partners, had not practised criminal law, and was not equipped to handle complicated cases such as the one Najib was facing'. Other press picked up on the same and uploaded the news on the media.

First issue — The impugned words are not defamatory

[48] In determining whether the impugned statements are defamatory, this court is guided by the well-established principles in the Federal Court's decision of *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; [1973] 1 MLRH 153, where it was held that a statement is defamatory if it tends to lower the plaintiff in the estimation of right-thinking members of society or exposes them to hatred, contempt, or ridicule. Or even cause them to be shunned or avoided.

[49] Similarly, in *Chiam See Tong v Ling How Doong & Ors* [1995] 1 SLR 152; [1996] SGHC 293; [1996] SCD 188 the Singapore Court of Appeal affirmed that the standard to be applied is that of the ordinary reasonable reader, one who is fair-minded and not unduly suspicious. This test was adopted by our Federal Court in *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 2 MLRA 345; [2019] 3 CLJ 729; [2019] 2 AMR 525 which this court applied as below:

> [38] The test involved in determining whether or not the words complained of are defamatory is a two-stage process. Firstly, it must be considered what meaning the words would convey to an ordinary person; and secondly, it must be considered whether under the circumstances in which the words were published, a reasonable man would be likely to understand that in a defamatory way.

[50] The impugned words appear in para 2 and 6 of the press release dated 19 August 2022, issued by the second defendant in her capacity as president of the Malaysian Bar. These passages refer by name to the plaintiffs and characterise the conduct of the defence team as comprising 'unscrupulous strategies', 'a perversion of our justice system', and 'unprofessional conduct' requiring disciplinary action.

[51] In the abstract, these words are plainly capable of bearing a defamatory meaning. As held by the High Court in *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors* [1995] 1 MLJ 39; [1994] 3 MLRH 203; [1995] 1 CLJ 117; [1995] 1 AMR 069, whether the words are capable of

being defamatory is a question of law to be determined by the judge.

[52] The impugned statements do make pointed assertions. The plaintiffs are named and associated with terms such as 'unscrupulous strategies', 'a perversion of justice system', and 'unprofessional conduct'. On the face of it, these statements are capable of defamatory meaning, satisfying the first limb of the *Raub Australian Gold Mining Sdn Bhd* test.

[53] However, this court must assess whether, in context, the words would actually convey a defamatory meaning to the ordinary reader. In *Raub Australian Gold Mining Sdn Bhd*, the Federal Court reiterated the two-stage approach: (a) whether the words are capable of bearing a defamatory meaning; and (b) whether, in their natural and ordinary meaning, they in fact bear such meaning.

[54] The context here is critical. As set out in the paragraphs that iterates the material facts above, the evidence discloses a substantial volume of information already in the public domain before the press release was issued on the evening of 19 August 2022:

(a) the appointment as solicitors had been publicly disclosed by the first plaintiff himself on social media;

(b) the first plaintiff's public confirmation of the change in solicitors and criticism of the former legal team;

(c) the first plaintiff uploaded a video of his explanation of taking up the appeal which had attracted wide responses from the public and press articles;

(d) multiple failed adjournment applications by the plaintiffs and lead counsel Hisyam Teh Poh Teik were made and widely reported;

(e) the first plaintiff's admission to the public that his team was unprepared and needed more time;

(f) the first plaintiff gave interviews and published commentary about him and his firm's role preparedness, and the Federal Court's perceived disposition;

(g) critical media commentary and numerous public posts, including remarks following news released on 26 July 2022 that informed the world at large 'SRC appeal: Najib drops Shafee, appoint Zaid's firm'. The public reception to the announcement of the first plaintiff's involvement and ZIST's appointment was largely unfavourable, with a prevailing perception among observers that the change in legal representation was a strategic manoeuvre aimed at delaying the scheduled hearing of the Federal Court appeals; and

(h) one comment by user named 'constitutional supremacy' expressly linked the plaintiffs' late entry to strategic delay tactics with prophetic prediction of the events stating:

> It is likely a plan to change solicitors at last minute so that put pressure on court to postpone Najib's case ... if the court does not allow adjournment, then can expect Zaid to withdraw acting for Najib.

[55] Moreover, the Federal Court, as expressed in the proceedings reiterated in its reasons for its decision as reported at *Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor and other appeals (No 1)* [2022] 5 MLJ 85; [2022] 8 CLJ 393. The Federal Court explicitly criticised the conduct of the legal team and the legal strategy it pursued. It noted that considerable judicial time and public resources were placed at risk by late-stage manoeuvres and that the Federal Court was left with no assistance from plaintiffs and their legal team despite ample warnings. The Federal Court held that the request for a four-month adjournment was without merit and that having accepted the brief, counsel and solicitors bore the professional duty to be ready.

[56] Against this backdrop, the impugned words — though strongly worded — do not operate in a vacuum. What may seem harsh are reasonably understood by the reader as commentary on known events, not a novel attack. The impugned words reflect sentiments and criticisms already circulating widely, and do not, in substance, introduce new defamatory imputations. As the Federal Court affirmed in *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300; [2019] 1 MLRA 515; [2019] 1 CLJ 329; [2018] 8 AMR 317, the alleged defamatory meaning must be assessed in light of what was already known or published.

[57] This court is of the considered opinion that its finding also aligns with the principle in *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 4 MLJ 260; [2024] 6 CLJ 635; [2024] 5 MLRA 68, where it was held that the reasonable reader is presumed to be aware of contemporaneous events and to interpret statements accordingly. The same applies here. Read in that light, the impugned statements are likely to be understood as institutional commentary — perhaps pointed, but not defamatory.

[58] The arguments put forth by the plaintiff were considered — they cited the Federal Court case of *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454; [2022] 5 MLRA 208; [2022] 5 CLJ 847; [2022] 4 AMR 753, in particular this part of the judgment:

> A key question to be asked is 'do the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?'. The words should not

be regarded as defamatory unless they involve some lowering of the plaintiff's reputation or of the respect with which he is regarded They must be disparaging of him. They must 'injure' the reputation or is likely to affect a person adversely in the estimation of reasonable people generally. The standard to be applied when determining if the injury was significant must be done after it is viewed through the eyes and ears of right thinking members of society (otherwise known as the hypothetical reasonable reader).

[59] The above principle is adopted without reservation. However, the application of that test must be grounded in the facts of each case and the reputational context in which the impugned words were published.

[60] On the evidence, by the time the Malaysian Bar issued its press release on 19 August 2022, the following matters (as stated in para 53 above) were already firmly in the public domain. Those include the facts that the Federal Court had publicly and repeatedly refused all attempts at adjournment, the plaintiffs' own public disclosures, the unfolding of events in open court and the scrutiny of the plaintiffs' decisions and actions by the legal fraternity and the wider public.

[61] In these circumstances, the impugned words — though strongly worded — did not materially lower the plaintiffs' reputation any further than what was already in place. As the Federal Court in *Lim Lip Eng* clarified, not every criticism amounts to defamation. The injury to reputation must be significant and must cause the plaintiff to be disparaged or lowered in the eyes of the hypothetical reasonable reader.

[62] This court accepts that professional reputations are deserving of protection. However, the legal threshold for defamation is not met where the sting of a statement does not materially add to a reputational damage already occasioned by events and disclosures independent of the impugned statements published.

[63] For these reasons, this court is therefore not satisfied that the impugned words, in the context in which they were published and in light of the substantial material already publicly available, and when read fairly in context and through the eyes of an informed reasonable reader, bear a defamatory meaning in law.

Second issue — The impugned words referred to the plaintiffs

[64] The next issue for determination is whether the impugned words published in the press release dated 19 August 2022 refer to the plaintiffs, either directly or by necessary implication, such that they are identifiable to the

reasonable reader. The law is well settled that a plaintiff doesn't have to be named specifically, so long as he or she is identifiable to the ordinary reasonable reader based on the words used and the surrounding circumstances: *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390; [1989] 3 MLRH 120; [1990] 3 CLJ Rep 691 and *Gatley on Libel and Slander* (12th Ed, para 7.5).

[65] The plaintiffs must establish on a balance of probabilities, that a reasonable reader acquainted with the facts would understand that the words refer to them. This question is grounded in fact, but determined by legal principles developed by the House of Lords in *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239.

[66] The burden lies on the plaintiffs to prove, on a balance of probabilities, that a reasonable reader, with knowledge of the background, would understand the impugned words to refer to them. The test is whether the words 'would reasonably lead persons acquainted with them to believe that they were the persons referred to' — see *Knupffer v London Express Newspaper Ltd* [1944] AC 116 and *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services* [2009] 3 MLJ 665; [2009] 1 MLRA 392; [2009] 4 CLJ 113.

[67] For clearer analysis of the impugned statements, para 2 of the press release is reproduced again here which reads:

> The nation is witnessing our justice system being abused and brought to disrepute through the frantic acts and numerous attempts to postpone the hearing of the case, application to discharge from acting for the former Prime Minister, defiance by refusing to proceed with submissions on the appeal after the Federal Court had made its ruling, and the sudden discharge of Zaid Ibrahim, Liew Teck Huat and Rueben Mathiavaranam, by Dato' Sri Najib Razak.

[68] This para 2 expressly names all three plaintiffs. There is no ambiguity. The reference to them as having been 'suddenly discharged' is connected with surrounding commentary on 'frantic acts' and 'defiance'. A reasonable reader would read the sentence as attributing these acts to or involving the plaintiffs.

[69] The quarrel is on para 6 of the press release which is also reproduced again here that states:

> The various attempts to undermine the justice system through such unscrupulous strategies are a perversion of our justice system and an abuse of the court process. The advocates and solicitors involved in such acts have conducted themselves unprofessionally and would have to face disciplinary action.

[70] The defendants contended that 'The advocates and solicitors involved

in such acts ...' could mean others, such as lead counsel Hisyam Teh Poh Teik, and not necessarily the plaintiffs. It was submitted that the phrase is general and not confined to the plaintiffs and ZIST. The crux of the defendants' argument is that the conduct described in para 6:

> 'unscrupulous strategies,' 'perversion of justice' and 'unprofessional conduct' — should be read as referring to strategies more calculated or deliberate than what was merely 'frantic' or 'incompetent', and therefore not imputable to the plaintiffs, whom they say acted in haste, not deceit.

[71] This court finds that argument unpersuasive. Paragraph 6 must be read contextually and holistically with para 2, which names the plaintiffs and sets out the series of acts described in narrative terms that includes the 'frantic acts' the discharge, and the refusal to proceed with submissions. When read as a whole, paras 2 and 6 form part of a continuous narrative. Although this para 6 does not name the plaintiffs, the link is direct and strong.

[72] The further arguments of the defendants are that para 6 of the press release is not a definitive allegation but a future-looking statement, suggesting only the possibility of consequences. However, the issue here is not about defamatory meaning (which is the first issue) but whether the plaintiffs are identified. A conditional or opinion-based formulation does not neutralise a reference if the reader would still understand it to point to a known person or group.

[73] Moreover, the test is objective: would a reasonable reader, informed of the public facts, understand para 6 to refer to the plaintiffs? Applying *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390 and *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, the answer is yes.

[74] This court cannot ignore that the plaintiffs were the only firm of solicitors known to have taken over and been discharged within the narrow window of 25 July 2022 to 19 August 2022, amidst public controversy. The chain of reference is not speculative — it is grounded in contemporaneous knowledge.

[75] Furthermore, the plaintiffs were by then widely identified in the public domain as having been part of the newly engaged defence team. They had issued public statements and been named in proceedings, media reports, and court documents.

[76] The second defendant, in her testimony, admitted that she was referring to the plaintiffs in the press release and did not dispute their identifiability. Her explanation was that the conduct warranted institutional commentary, not that the plaintiffs were not in contemplation.

A [77] Finally, the press release was posted on the official website of the first plaintiff — the Malaysian Bar, of which the plaintiffs are members. Readers from within the legal profession — well-informed of the case developments — would clearly associate the impugned criticisms with the plaintiffs, particularly given their unique position as named solicitors who had recently entered and
B exited record.

[78] On the totality of the evidence, the court finds that:

(a) para 2 of the press release refers expressly to the plaintiffs by name; and

C (b) para 6 of the press release refers to the same course of conduct and includes the plaintiffs by necessary implication.

[79] The impugned words would be understood by the ordinary reasonable
D reader to refer to the plaintiffs, especially those acquainted with the public developments in the Federal Court appeals.

[80] Accordingly, the second issue is answered in the affirmative. The impugned statements do refer to the plaintiffs.

E

DEFAMATION NOT PROVEN

[81] All elements of the tort of defamation must be fulfilled. This court concludes that on a balance of probabilities, the defamatory meanings alleged
F by the plaintiffs in their amended SOC are not borne out by the impugned words, either expressly or by necessary implication. Although the impugned words referred to the plaintiffs and were published, the impugned words were not defamatory in their natural and ordinary meaning, when read in context.

G **[82]** The plaintiffs have failed to establish the first and essential element of the defamation of tort on a balance of probabilities. As the Federal Court confirmed in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577; [2021] 4 CLJ 327; [2021] 2 MLRA 626, only if the defamatory nature of the press release is proven does the burden shift
H to the defendants to establish the defence they had pleaded (which are justification, fair comment, or qualified privilege).

[83] Consequently, where the threshold element of defamatory meaning is not proven in this case, this court need not consider the pleaded defences.

I

CONSPIRACY TO INJURE THE PLAINTIFFS

[84] The plaintiffs alleged in para 22 of the amended soc that the defendants conspired together to issue the press release for the purpose of injuring the

plaintiffs' reputation. The case is put as one where the defendants maliciously and wrongfully conspired and combined to defame and injure the plaintiffs.

[85] However, on cross-examination, the second plaintiff admitted he had no direct knowledge of any deliberation between the Malaysian Bar and second defendant prior to the issuance of the press release. He merely assumed that the second defendant acted with authority of the Malaysian Bar after considered deliberation or contemplation.

[86] In contrast, the second defendant testified that she settled and issued the press release on her own, in her capacity as president of the Malaysian Bar, and that no one else approved or contributed to the drafting of the statement. This evidence stood unchallenged in cross-examination.

[87] There is no documentary or testimonial evidence of:

(a) pre-issuance collaboration between the defendants;

(b) a concerted plan to target the plaintiffs;

(c) the predominant plan was to injure the plaintiffs; or

(d) any agreement to defame or injure the plaintiffs.

[88] The law requires the plaintiffs to prove the above and that damage was suffered by the plaintiffs as a result of the defendants' actions. See *Handskar (M) Sdn Bhd v Medical Products Sdn Bhd & Anor* [2024] 9 MLJ 237; [2023] MLRHU 2471.

[89] The plaintiffs' claim falters at the first hurdle. There is no evidence — direct or circumstantial — that there was any agreement or combination between the Malaysian Bar and the second defendant to act together against the plaintiffs. The evidence shows uncontested that the second defendant issued the press release without consultation or endorsement from the Bar Council. Even if some form of communication between the defendants were assumed, this court accepts the defendants' submissions, relying on the Federal Court case of *Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors* [1979] 1 MLJ 71; [1978] 1 MLRA 66, that where the alleged conspirational act is the publication of a defamatory statement, and that tort is separately pleaded, the conspiracy claim cannot stand as an independent tort. It is subsumed into the defamation cause of action.

[90] The plaintiffs did not plead nor prove any act of injury separate from the publication of the press release. The conspiracy claim is therefore either unfounded in fact or redundant in law. Thus, the plaintiffs' claim for conspiracy to injure is dismissed.

BREACH OF STATUTORY DUTY

[91] The plaintiffs alleged that the second defendant, in issuing the press release, breached her statutory duty under the LPA. The provision of s 90 of the LPA was cited which sets out the framework for lodging and investigating complaints against advocates and solicitors. They contended that the second defendant acted ultra vires her statutory role by publicly condemning the plaintiffs without affording them procedural fairness, and without invoking the mechanisms provided under Part VII of the LPA.

[92] In support, the plaintiffs relied on the Federal Court case of *Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Anor* [2021] 6 MLJ 563 where the Federal Court held that public statements by the then Attorney General referring to disciplinary matters may, if unjustified, give rise to liability in tort. However, in that case, the statement was alleged to be part of a broader prosecutorial and personal campaign against the plaintiff. The Federal Court did not recognise a stand-alone tort of breach of statutory duty but evaluated the statements in light of misfeasance in public office.

[93] Here, the plaintiffs contended that by publicly stating that they had acted unprofessionally and ought to face disciplinary proceedings, the second defendant bypassed the statutory process and made a premature and extra-procedural determination.

[94] The difficulty with this submission lies in the nature and scope of s 90 of the LPA. It sets out the disciplinary complaint process related to advocated and solicitors, but does not impose a statutory prohibition on commentary or expression of concern by the Malaysian Bar or its president. Nor does it expressly or implicitly confer a private right of action for its breach. This court is guided by the Court of Appeal's decision in *Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor* [2011] 2 MLJ 1; [2010] 3 MLRA 78; [2011] 1 CLJ 409 that confirms not all statutory duties give rise to civil remedies.

[95] Further, the second defendant issued the press release in her institutional capacity as the president of the Malaysian Bar pursuant to s 42(1)(d) of the LPA, which empowers the Malaysian Bar to express views on matters concerning the legal profession and the administration of justice. The press release, read in full, does not purport to pronounce the plaintiffs, guilty of misconduct, but rather to express institutional concern and to urge that the events be referred for appropriate professional scrutiny.

[96] There is also no evidence of actual loss suffered by the plaintiffs that flows from a breach of statutory duty as opposed to reputation harm (which

falls under the tort of defamation). The Federal Court in *Tan Sri Muhammad Shafee* recognised this distinction and declined to extend tortious liability merely because a public officer made statements involving disciplinary language.

[97] It is noted by this court though, that s 90 of the LPA as cited by the plaintiffs, does not in itself govern the procedure for initiating disciplinary complaints. That function is addressed under s 99 of the LPA, which falls under Part VII — the Disciplinary Proceedings, and sets out the proper procedural channel for lodging misconduct complaints before the disciplinary board (DB). The second defendant made reference in her evidence to s 99 of the LPA but the plaintiffs neither cited or relied upon it in their pleadings nor submissions.

[98] The learned counsel for the second defendant contended, which this court accepts, that she had issued the press release under her institutional authority pursuant to s 42(1)(d) of the LPA, which empowers the Malaysian Bar to express views on matters affecting the legal profession and the administration of justice. The impugned statement, while strong in tone, does not purport to pronounce disciplinary finding or initiate proceedings. It is a commentary framed as institutional concern over developments of national legal significance.

[99] It is observed that even if a breach of statutory duty were assumed, the plaintiffs have not established any separate, identifiable damage arising from the alleged breach. The harm alleged — injury to reputation — has already been pleaded under defamation, and the law does not permit double recovery under overlapping heads. As recognised in *Pickering v Liverpool Daily Post and Echo Newspapers plc and others* [1991] 2 AC 370; [1990] 1 All ER 335; [1990] 2 WLR 494, reputational injury does not support a cause of action for breach of statutory duty absent legislative intent to create a private right of action.

[100] In conclusion, this court finds that the plaintiffs have not established that s 90 of the LPA, as pleaded, creates a civilly enforceable statutory duty capable of supporting an independent private cause of action against the the second defendant or the Malaysian Bar, in the circumstances of this case. This court finds that the second defendant acted within the institutional remit of s 42(1)(d) of the LPA, and that the impugned statements were expressions of institutional concern, not a premature disciplinary finding. In the absence of reliance on s 99 of the LPA or proof of actual loss, the plaintiffs' cause of action against the defendants is without merit and is therefore dismissed.

CONCLUSION

[101] For the foregoing reasons, the plaintiffs' claims for defamation, conspiracy to injure, and breach of statutory duty are dismissed.

[102] The defendants are awarded costs. However, the learned counsel for the defendants intimated to this court the gracious and magnanimous position of the defendants; although substantial time and resources had been allocated for this case, they offered an olive branch in not seeking any costs and resting this case as is here.

[103] This court notes the commendable and considerate position taken by the defendants in electing not to pursue costs, despite the considerable time and resources expended in the defence of this action. In recognition of this conciliatory stance, and in the interest of closure, although the offer of not seeking costs is not conditional, this court makes no order as to costs.

[104] This court makes no other order.

Plaintiffs' claim for defamation, conspiracy to injure, and breach of statutory duty dismissed with no order as to costs.

Reported by Dzulqarnain Ab Fatar